

MAR 20 2012

John A. Clarke, Executive Officer/Clerk
BY  Deputy
Gloria Robinson

LAWRENCE A. MICHAELS (SBN 107260), lam@msk.com
VERONICA VON GRABOW (SBN 259859), vtv@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

LINDA MILLER SAVITT (SBN 094164)
BALLARD, ROSENBERG, GOLPER & SAVITT LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, California 91203-9946
Telephone: (818) 508-3700
Facsimile: (818) 506-4827

CAROL A. HUMISTON (SBN 115592)
SENIOR ASSISTANT CITY ATTORNEY – CITY OF BURBANK
275 East Olive Avenue
Burbank, California 91510
Telephone: (818) 238-5707
Facsimile: (818) 238-5724

Attorneys for Defendant and Cross-Complainant CITY OF BURBANK, including the
POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an
independent entity named “BURBANK POLICE DEPARTMENT”)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

v.

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE,

Defendants.

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

Cross-Complainants,

v.

OMAR RODRIGUEZ, an Individual;

Cross-Defendant.

Case No. BC 414602

Location: 37
Judge: The Honorable Joanne O'Donnell

**DEFENDANT CITY OF BURBANK'S
BRIEF REGARDING THE
INADMISSIBILITY OF EVENTS
OCCURRING AFTER THE DATE OF THE
FIRST AMENDED COMPLAINT**

File Date: May 28, 2009
Trial Date: Feb. 15, 2012 (Plff. Karagiosian)
May 2, 2012 (Plff. Guillen);
Jul. 11, 2012 (Plff. O. Rodriguez)
Discovery Referee: The Hon. Diane Wayne, Ret.

1 **A. INTRODUCTION**

2 Defendant City of Burbank hereby submits this brief pursuant to the court's request during
3 the March 19, 2012 hearings regarding motions *in limine*, in support of Burbank's *Motion In*
4 *Limine* No. 3. We wish to stress, at the outset, that Burbank is not asserting that all evidence of
5 events that happened after the filing of the complaint in an action is inadmissible. That is not the
6 issue. Rather, Burbank is asserting that new claims, which arose after the operative complaint was
7 filed, are not properly before the Court. Evidence that such other claims exist, but which has no
8 relevance to the actual claim before the Court, must be excluded under Evidence Code Section
9 350. Furthermore, any such evidence of alleged wrongful acts which are not actually at issue in
10 the litigation would be prejudicial and confusing to the jury, and must be excluded under
11 Evidence Code Section 352.

12 Here, Burbank's *motion in limine* relates specifically to four incidents that happened after
13 the filing of Plaintiff Steve Karagiosian's ("Plaintiff" or "Karagiosian") First Amended Complaint
14 ("FAC") on or about July 31, 2009. Three of these incidents involve the conduct of Burbank
15 attorneys in defending this or other litigation. The fourth deals with the conduct of an LA County
16 Sheriff during a training course in March 2010. None of these incidents is related in any way to
17 the claims contained in the FAC. None of them involves any of the same people identified as
18 alleged harassers in the FAC. The only possible reason for Karagiosian to introduce such
19 evidence is to prove new and different claims, which are not properly before the Court. Such
20 evidence should be excluded.

21
22 **B. ARGUMENT**

23 Events that allegedly occurred after the FAC was filed, are not properly at issue in this
24 case. Evidence is not relevant unless it relates "to some *matter properly at issue* in the case."
25 Wegner, Fairbank, Epstein & Chernow, CAL. PRAC. GUIDE: CIVIL TRIALS & EVIDENCE,
26 8:103 (The Rutter Group 2011); *see also Decter v. Stevenson Properties, Inc.*, 39 Cal. 2d 407,
27 419-420 (1952) ("To be admissible, '[evidence]' must correspond with the substance of the

1 material allegations, and be relevant to the question in dispute.”). Therefore, evidence relating to
2 these post-FAC events is not relevant and should be excluded.

3 First, the post-FAC events are not properly at issue in this case because they are not
4 encompassed by the FAC. Obviously, at the time it was filed the FAC did not encompass events
5 that had not yet occurred and Karagiosian made no subsequent effort to amend or otherwise
6 supplement his FAC to reference any such events.¹ “One of the functions of pleadings is to limit
7 the issues and narrow the proofs.” *Fuentes v. Tucker*, 31 Cal. 2d 1, 4 (1947). “Evidence which is
8 not pertinent to the issues raised by the pleadings is immaterial, and it is error to allow the
9 introduction of such evidence.” *Id.*; citing *In re Guardianship of Boyes*, 151 Cal. 143, 147 (1907)
10 (“One of the *elemental* rules of the law of evidence is that the evidence must correspond with the
11 allegations and be confined to the point at issue. If not, it is said to be irrelevant.”) (emphasis
12 added). Moreover, Karagiosian cannot recover based on alleged conduct that is not properly in the
13 FAC. *Griffin Dewatering Corp. v. Northern Ins. Co. of New York*, 176 Cal. App. 4th 172, 209
14 (2009) (“A plaintiff must recover, if at all, upon a cause of action set out in the complaint, and not
15 on some other cause of action which may be developed by the proofs.”). Since Karagiosian
16 cannot recover based on these alleged post-FAC events, evidence relating to them is irrelevant.
17 *Casey v. Overhead Door Corp.*, 74 Cal App 4th 112 (1999) (since plaintiffs could not recover
18 economic losses, testimony on that issue would have been irrelevant, and irrelevant evidence is not
19 admissible); overruled on other grounds, *Jimenez v. Superior Court*, 29 Cal.4th 473 (2002).

20 Second, even if the post-FAC events were encompassed by the FAC – which they are not –
21 Karagiosian failed to exhaust his administrative remedies regarding any such events.
22 Karagiosian’s failure to exhaust his administrative remedies is a jurisdictional bar to a civil suit
23 based on those events.

24
25 ¹ Any attempt by Karagiosian to amend the FAC now would prejudice Defendant.
26 *Magpali v. Farmers Group Inc.*, 48 Cal. App. 4th 471, 488 (1996) (“Where the trial date is set, the
27 jury is about to be impaneled, counsel, the parties, the trial court, and the witnesses have blocked
28 the time, and the only way to avoid prejudice to the opposing party is to continue the trial date to
allow further discovery, refusal of leave to amend cannot be an abuse of discretion.”).

1 The California Fair Employment and Housing Act ("FEHA") mandates that, before filing a
2 civil claim for violation of the FEHA, an employee must exhaust his administrative remedies by
3 filing a complaint with the Department of Fair Employment and Housing ("DFEH") and obtain a
4 notice of right to sue in order to be entitled to file a civil action in court. *Okoli v. Lockheed*
5 *Technical Operations Co.*, 36 Cal. App. 4th 1607, 1613 (1995); *Martin v. Lockheed Missles &*
6 *Space Co.*, 29 Cal. App. 4th 1718, 1724 (1994). If a complaint regarding the alleged unlawful
7 practices is not filed with the DFEH, the court is without jurisdiction to consider the employee's
8 claim. *Miller v. United Airlines*, 174 Cal. App. 3d 878, 890 (1985) ("The failure to exhaust an
9 administrative remedy is a jurisdictional, not a procedural, defect. Thus, instead of abating an
10 action as premature, a trial court must grant summary judgment and dismiss the suit upon a
11 finding that a party has not exhausted his or her administrative remedies.").

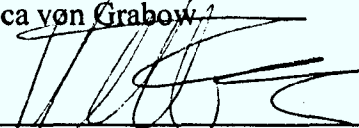
12 To exhaust "administrative remedies as to a particular act made unlawful by the Fair
13 Employment and Housing Act, the [employee] must specify *that* act in the administrative
14 complaint, even if the complaint does specify other cognizable wrongful acts." *Okoli*, 36 Cal.
15 App. 4th at 1613; quoting *Martin*, 29 Cal. App. 4th at 1724 (italics in original). A plaintiff may
16 elaborate on charges made with the agency, or describe new unlawful acts, as long as the agency
17 has had a reasonable opportunity to investigate those acts. *Okoli*, 36 Cal. App. 4th at 1614.
18 However, where an employee attempts to add "claims that were neither like nor reasonably related
19 to his DFEH claim and were not likely to be uncovered in the course of a DFEH investigation,"
20 any such additional claims are barred by the exhaustion of remedies doctrine. *Id.*, at 1617.

21 Here, Karagiosian filed administrative charges with the DFEH on May 27, 2009. The
22 allegations of Karagiosian's administrative charges covered acts occurring prior to May 27, 2009.
23 Because Karagiosian requested immediate right-to-sue letters, he did not provide the DFEH with
24 the opportunity to investigate *any* of his claims, much less claims that were based on events that
25 had not yet occurred and were not, as such, in his administrative charge. Karagiosian, therefore,
26 failed to exhaust his administrative remedies as to any events that allegedly occurred after he filed
27 his DFEH charges and the Court does not have jurisdiction to hear allegations concerning such

1 events. *Okoli*, 36 Cal. App. 4th at 1617. Evidence relating to these events, therefore, should be
2 excluded.

3
4 Dated: March 20, 2012

MITCHELL SILBERBERG & KNUPP LLP
Lawrence A. Michaels
Veronica von Grabow

6
7 By: 
Veronica von Grabow
Attorneys for Defendants and
8 Cross-Complainant CITY OF BURBANK,
9 including the POLICE DEPARTMENT OF
10 THE CITY OF BURBANK (erroneously
11 sued as an independent entity named
12 "BURBANK POLICE DEPARTMENT")
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 **PROOF OF SERVICE**

2 42729-00001

3 *Rodriguez, et al. vs. Burbank Police Department, et al.* — LASC Case No. BC414602

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP,
11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

7 On March 20, 2012, I served a copy of the foregoing document(s) described as:
8 **DEFENDANT CITY OF BURBANK'S BRIEF REGARDING THE INADMISSIBILITY**
9 **OF EVENTS OCCURRING AFTER THE DATE OF THE FIRST AMENDED**
10 **COMPLAINT** on the interested parties in this action at their last known address as set forth
below by taking the action described below:

11 Solomon E. Gresen, Esq., seg@rglawyers.com
12 Steven V. Rheuban, Esq., svr@rglawyers.com
13 Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
14 Encino, CA 91436
T: (818) 815-2727
F: (818) 815-2737
15 *Attorneys for Plaintiffs Cindy Guillen-Gomez, Steve Karagiosian,*
Elfego Rodriguez, and Jamal Childs

16
17 ☒ **BY PERSONAL DELIVERY:** I personally delivered the document(s) listed above to the
18 person(s) set forth above at the hearing on this matter.

19 I declare under penalty of perjury under the laws of the State of California that the above is
20 true and correct.

21 Executed on March 20, 2012, at Los Angeles, California,

22 
23 _____
24 Veronica von Grabow